



U.S. DEPARTMENT OF
ENERGY

Energy Efficiency &
Renewable Energy

BUY AMERICAN PROVISIONS



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American Recovery & Reinvestment Act

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Buy American Provision

This Web page contains guidance for financial assistance recipients regarding Buy American Recovery Act provisions under projects funded by the American Recovery and Reinvestment Act of 2009 and administered by the Office of Energy Efficiency and Renewable Energy (EERE).

The Buy American provision in the American Recovery and Reinvestment Act of 2009 (section 1605 of Title XVI), provides that, unless one of three listed exceptions applies (nonavailability, unreasonable cost, and inconsistent with the public interest), and a waiver is granted, none of the funds appropriated or otherwise made available by the Act may be used for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all the iron, steel, and manufactured goods used are produced in the United States.

Please check this page regularly, as the Office of Energy Efficiency and Renewable Energy will provide updates as further guidance is released.

If you have any questions about the Buy American provision, please contact buyamerican@ee.doe.gov.

Guidance Documents

These include guidance and regulations documents that provide information on the Buy American Provision.



New Guidance:

[Buy American Desk Guide](#)

- [Guidance on Documenting Compliance with the Recovery Act Buy American Provisions](#)
- [Guidance on Manufactured Goods and Substantial Transformation for Financial Assistance Awards](#)
- [Recovery Act Buy American Guidance on Implementing the Agreement Between](#)

FEATURES



A Desk Guide to Buy American Provisions of the American Recovery and Reinvestment Act of 2009



Waiver Application: Apply for a nonavailability or unreasonable cost waiver



View All Waivers Issued by EERE

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Waivers Issued by DOE under the Buy American Provisions

This list includes all waivers that have been issued for the Buy American Recovery Act provisions under projects funded by the American Recovery and Reinvestment Act of 2009 and administered by the Office of Energy Efficiency and Renewable Energy (EERE).

All waivers are "blanket" waivers, and are both retrospective and prospective. They cover all procurement past, present and future.


Grantees who need a product already covered in a waiver must document compliance, consistent with the guidance, but do not need to apply for a new waiver.

When a grantee utilizes an item covered by a waiver in their project, they must inform their Project Officer, who will work with the Contracting Officer to amend the Terms and Conditions of the grant to reflect the waiver. When a sub-recipient utilizes an item covered by a waiver in a project, they must inform the prime grant recipient, such that the prime grant recipient can inform the Project Officer and complete the waiver above.

Information is available on:

- [Non-Availability Waivers](#)
- [Public Interest Waivers](#)
- [List of EERE Waivers in the Federal Register](#)

Non-Availability Waivers

Date	Item	Description
January 12, 2011 Non-availability Waiver (4) 	Two-stage, steam heated absorption chillers	Rated at 500-1500 tons.
	Single wall evacuated tube collectors for solar thermal systems	Only when used in an educational context for the purposes of comparing relative efficiency of solar thermal technologies
	Other absorption chillers	This is an extremely small unit for educational purposes

AUTHORITY



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“NONE OF THE FUNDS APPROPRIATED FOR OR OTHERWISE MADE AVAILABLE BY THE RECOVERY ACT MAY BE USED FOR A PROJECT FOR THE CONSTRUCTION, ALTERATION, MAINTENANCE, OR REPAIR OF A PUBLIC BUILDING OR PUBLIC WORK UNLESS—

ALL OF THE IRON, STEEL, AND MANUFACTURED GOODS USED IN THE PROJECT ARE PRODUCED OR MANUFACTURED IN THE UNITED STATES.” (2 CFR 176.70)

MANUFACTURED GOODS



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ONLY FOR PUBLIC BUILDING/PUBLIC WORK INCORPORATED INTO THE BUILDING OR WORK

PROCESSED INTO A SPECIFIC FORM AND SHAPE; OR COMBINED WITH
OTHER RAW MATERIAL TO CREATE A MATERIAL THAT HAS DIFFERENT
PROPERTIES THAN THE PROPERTIES OF THE INDIVIDUAL RAW
MATERIALS= “MANUFACTURED GOOD”

2 C.F.R. § 176.140(A)(1).

WHAT IS A DOMESTIC MANUFACTURED GOOD?



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PRODUCTION OR MANUFACTURING FACILITY (SUBSTANTIAL TRANSFORMATION) IS PHYSICALLY LOCATED IN THE UNITED STATES OR ITS TERRITORIES

THERE IS NO REQUIREMENT WITH REGARD TO THE ORIGIN OF COMPONENTS OR SUBCOMPONENTS IN MANUFACTURED GOODS USED IN A PROJECT, AS LONG AS THE MANUFACTURING OCCURS IN THE UNITED STATES.

2 CFR 176.70(A)(2)(II).

THE DOMICILE OF THE PARENT COMPANY, SUBSIDIARY, DISTRIBUTOR, OR SUPPLIER IS NOT RELEVANT FOR DETERMINING COMPLIANCE WITH THE RECOVERY ACT BUY AMERICAN PROVISION.

SUBSTANTIAL TRANSFORMATION



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MUST OCCUR IN UNITED STATES, THE SUBSTANTIAL TRANSFORMATION
GUIDANCE:

[HTTP://WWW1.EERE.ENERGY.GOV/RECOVERY/PDFS/EERE_SUBSTANTIAL_TRANSFORMATION_GUIDANCE.PDF](http://www1.eere.energy.gov/recovery/pdfs/eere_substantial_transformation_guidance.pdf)

PROVIDES 3 QUESTIONS, ANSWERING THESE (OR HAVING THE VENDOR
ANSWER THESE) SHOULD CLARIFY SUBSTANTIAL TRANSFORMATION



WHAT RECORDS ARE NEEDED TO DOCUMENT COMPLIANCE WITH THE BUY AMERICAN PROVISIONS?

GRANTEES ARE REQUIRED TO FLOW DOWN THE BUY AMERICAN REQUIREMENTS TO SUBRECIPIENTS, AND IN ANY SUBAWARDS OR SUBCONTRACTS.

CONTRACTORS AND VENDORS SHOULD BE HELD RESPONSIBLE FOR COMPLYING WITH THE BUY AMERICAN PROVISIONS BY THE GRANTEES. THE GRANTEES ARE ACCOUNTABLE FOR THE SUBGRANTEES, CONTRACTORS AND VENDORS ACTIONS.

GRANTEES, SUB-RECIPIENTS AND SUBAWARDEES MAY ASK CONTRACTORS AND VENDORS FOR LETTERS OF CERTIFICATION.

LETTERS OF CERTIFICATION



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LOOK FOR:

- ❖ PRODUCT NAME AND MODEL NUMBER
- ❖ LOCATION(S) OF MANUFACTURING ACTIVITIES
- ❖ MANUFACTURER CONTACT INFORMATION
- ❖ DESCRIPTION OF MANUFACTURING PROCESS

BE WARY OF:

- ❖ VAGUE CERTIFICATIONS
- ❖ CLAIMS THAT A PRODUCT IS COVERED BY TRADE AGREEMENTS
- ❖ CLAIMS THAT A PRODUCT IS COVERED UNDER A WAIVER
- ❖ INFORMATION ON PERCENTAGE OF U.S.-MADE COMPONENTS (OR SUPPLY ITEM, FAR REFERENCE)
- ❖ ANY MENTION OF ASSEMBLY

BROAD STATEMENTS ARE INSUFFICIENT:

- ❖ "WE COMPLY WITH THE BUY AMERICAN REQUIREMENT"
- ❖ "ALL PRODUCTS ARE AMERICAN"
- ❖ "THIS PROJECT MEETS BUY AMERICAN"
- ❖ "WE ARE CERTIFIED BUY AMERICAN COMPLIANT"

THERE IS NO AGENCY THAT "CERTIFIES" BUY AMERICAN COMPLIANCE

DOCUMENTATION SHOULD BE SPECIFIC ABOUT THE LOCATION OF THE MANUFACTURING (CITY AND STATE)

RED FLAGS!!!!

BUY AMERICAN IS NOT!!!

**A BALANCING OR PERCENTAGE OF CONTENT TEST- IT
DEPENDS UPON THE LOCATION OF FINAL
MANUFACTURING (“SUBSTANTIAL TRANSFORMATION”)**

**SUBJECT TO NAFTA FOR PROJECTS UNDER 7.8
MILLION DOLLARS**

**THE “BUY AMERICAN CLAUSE” OF THE FAR- WATCH OUT
FOR MANUFACTURERS USING THE TERMS “SUPPLY
ITEM” “BUY AMERICAN CLAUSE”, “BUY AMERICAN ACT”
OR “BUY AMERICAN CONTENT” COMPLIANT- THIS IS NOT
THE STANDARD, AND THE PRODUCT MAY NOT BE
COMPLIANT WITH SECTION 1608 OF THE RECOVERY ACT.**



INTERNATIONAL OBLIGATIONS ONLY APPLY TO PROJECTS VALUED AT OR ABOVE \$7,804,000

MANY STATES AND SUB-FEDERAL ENTITIES HAVE SPECIFIC EXCLUSIONS
FROM CERTAIN AGREEMENTS

SEE APPENDIX SUBPART B OF 2 CFR 176

[HTTP://EDOCKET.ACCESS.GPO.GOV/2009/PDF/E9-9073.PDF](http://edocket.access.gpo.gov/2009/pdf/E9-9073.pdf)

FEBRUARY 16: U.S.—CANADA AGREEMENT EFFECTIVE DATE. THIS GIVES
CANADA ACCESS TO EECBG AND SEP PROJECTS ABOVE \$7.804 MILLION.



CAN ONLY BE DETERMINED BY THE ASSISTANT SECRETARY FOR ENERGY EFFICIENCY AND RENEWABLE ENERGY

NONAVAILABILITY (NOT PRODUCED OR MANUFACTURED IN
SUFFICIENT AND REASONABLY AVAILABLE QUANTITIES OF A
SATISFACTORY QUALITY)

UNREASONABLE COST (WILL INCREASE COST OF THE OVERALL
PROJECT BY MORE THAN 25%)

INCONSISTENT WITH THE PUBLIC INTEREST



NONAVAILABILITY/UNREASONABLE COST WAIVER REQUEST FORM
[HTTP://WWW1.EERE.ENERGY.GOV/RECOVERY/PDFS/EERE_BUY_AMERICAN_NONAVAILABILITY_TEMPLATE.PDF](http://www1.eere.energy.gov/recovery/pdfs/eere_buy_american_nonavailability_template.pdf)

TECHNICAL INFORMATION IS SENT TO MANUFACTURING EXTENSION
PARTNERSHIP FOR “SUPPLIER SCOUTING” AND TO INDUSTRY TRADE
ASSOCIATIONS, UNIONS, ETC TO SEARCH FOR DOMESTIC
MANUFACTURERS



ISSUED WAIVERS:

[HTTP://WWW1.EERE.ENERGY.GOV/RECOVERY/BA_WAIVERS.HTML](http://www1.eere.energy.gov/recovery/ba_waivers.html)

‘BLANKET’ WAIVERS THAT ARE BOTH RETROSPECTIVE AND PROSPECTIVE. COVER ALL PROCUREMENT PAST, PRESENT, AND FUTURE.

GRANTEES WHO HAVE THE NEED FOR A PRODUCT ALREADY COVERED IN A WAIVER NEED TO DOCUMENT COMPLIANCE, BUT DO NOT NEED TO APPLY FOR A WAIVER.

48 TOTAL ITEMS AS OF JUNE 10, 2011

LED TRAFFIC SIGNALS & EXPIRED PUBLIC-INTEREST WAIVER



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**AS OF DECEMBER 1ST,
THE WAIVER FOR LED
TRAFFIC SIGNALS WAS
WITHDRAWN**



**NATIONWIDE LIMITED
PUBLIC INTEREST
WAIVERS FOR
PURCHASES OF LED
LIGHTING AND HVAC
UNITS EXPIRED MARCH
31, 2010.**

**MUST HAVE TAKEN
SUBSTANTIAL STEPS
TOWARDS
PROCUREMENT AS
DEFINED IN WAIVER**



- ❖ DOMESTICALLY-MANUFACTURED MODULES CONTAINING FOREIGN-MANUFACTURED CELLS,
- ❖ FOREIGN-MANUFACTURED MODULES, WHEN COMPRISED EXCLUSIVELY OF DOMESTICALLY-MANUFACTURED CELLS, AND
- ❖ ANY ANCILLARY ITEMS AND EQUIPMENT (INCLUDING, BUT NOT LIMITED TO, CHARGE CONTROLLERS, BREAKERS AND FUSES, RACKS, TRACKERS, CABLES AND ALL OTHERWISE INCIDENTAL EQUIPMENT WITH THE EXCEPTION OF INVERTERS AND BATTERIES) WHEN UTILIZED IN A SOLAR INSTALLATION INVOLVING A U.S. MANUFACTURED PV MODULE, OR A MODULE MANUFACTURED ABROAD BUT COMPRISED EXCLUSIVELY OF DOMESTICALLY-MANUFACTURED CELLS.

ONLY UNTIL AUGUST 2011!!!!!!!!!!

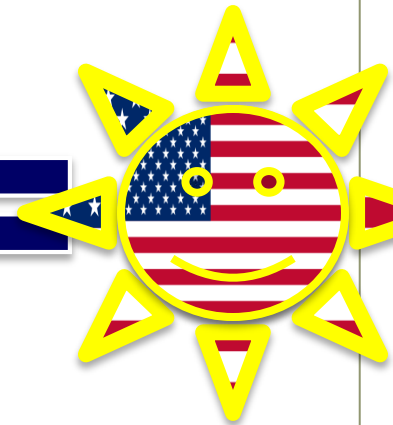
Solar Waiver- Until August 2011

Cell



Batteries
&

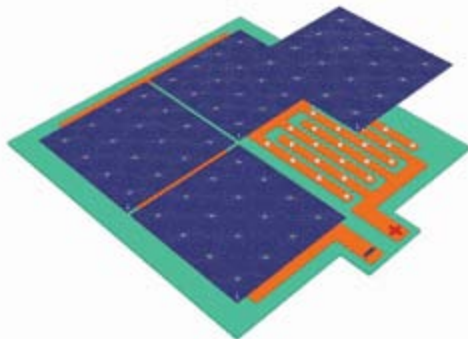
Inverters



or



Module



DE MINIMIS PUBLIC-INTEREST WAIVER



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DE MINIMIS WAIVER FOR INCIDENTAL ITEMS UP TO A LIMIT OF
NO MORE THAN 5 PERCENT OF THE TOTAL COST OF THE IRON,
STEEL, AND MANUFACTURED GOODS USED IN AND
INCORPORATED INTO A PROJECT.

5% of total procurement
cost

QUESTIONS???



ADDITIONAL QUESTIONS CAN BE SUBMITTED TO:
BUYAMERICAN@EE.DOE.GOV

WEBSITE:

[HTTP://WWW1.EERE.ENERGY.GOV/RECOVERY/BUY_AMERICAN_PROVISION.HTML](http://WWW1.EERE.ENERGY.GOV/RECOVERY/BUY_AMERICAN_PROVISION.HTML)